

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DEIDRE BROWN, LYNN CAIN, CHERYL  
GERALD, DEBRA JONES, DONNA  
KELSAY, ANNE M.Z. NOVOTNY and  
GLORIA SALAZAR, on behalf of  
themselves and all others  
similarly situated,

Plaintiffs,

NO. CIV. S-98-1719 LKK/JFM

v.

O R D E R

SACRAMENTO REGIONAL TRANSIT  
DISTRICT,

Defendant.

Plaintiff, Cheryl Gerald, is a class representative in a class action against Sacramento Regional Transit District ("the District") alleging gender discrimination in promotions, reclassification, pay and training. The court approved a consent decree in 2003 and a Special Master was appointed.

Pending before the court are two appeals of the Special Master's rulings. Plaintiff appeals the Special Master's March 6,

1 2007 ruling regarding her salary grade. Defendant appeals the  
2 Special Master's March 22, 2007 ruling regarding Ann Gorman's  
3 complaint of retaliation.

4 I.

5 STANDARD OF REVIEW

6 Pursuant to ¶ 29.6 of the Consent Decree:

7 The Special Master's decisions shall be final unless  
8 either Party requests review by the court within ten  
9 (10) days. The court shall use the "clearly erroneous  
10 or contrary to law" standard in all appeals of decisions  
11 by the Special Master. The Special Master and/or Court  
12 shall retain jurisdiction to resolve any issue timely  
13 raised prior to the expiration of the Consent Decree.

14 A "finding of fact is clearly erroneous if [the reviewing  
15 court has a] definite and firm conviction that a mistake has been  
16 committed." Burdick v. C.I.R., 979 F.2d 1369, 1370 (9th Cir. 1992).  
17 This standard "plainly does not entitle a reviewing court to  
18 reverse the finding of the trier of fact simply because it is  
19 convinced that it would have decided the case differently."  
20 Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 573 (1985).  
21 Where there are "two permissible views of the evidence, the  
22 factfinder's choice between them cannot be clearly erroneous." Id.  
23 at 574. 574. The standard is "significantly deferential" to the  
24 fact finder. Concrete Pipe and Products of California, Inc. v.  
25 Construction Laborers Pension Trust for Southern California, 508  
26 U.S. 602, 623 (1993).

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## II.

## ANALYSIS

At the outset, it is worth remarking that both parties assume a level of knowledge that the court does not share. This case is complex and complicated. Generally speaking, the parties' briefs failed to sufficiently explain basic background information, making resolution of the pending appeals unnecessarily difficult.

### A. Plaintiff's Appeal

Ms. Gerald seeks reversal of the Special Master's March 7, 2007 Order. As explained herein, Ms. Gerald fails to establish that the order is clearly erroneous or contrary to law.

## 1. Relevant Facts

Cheryl Gerald currently works in the District's Information and Technology Department ("IT") as a Information Technology Analyst. Until recently, Ms. Gerald was paid at grade level 15.<sup>1</sup> On January 5, 2006, Ms. Gerald filed a Request for Reclassification of her position pursuant to ¶ 55 of the Consent Decree. The District granted Ms. Gerald's request and hired an

<sup>1</sup> The court notes that neither party explains what grade 15 actually means. Ms. Gerald simply states:

RT assigns salary grades as set forth in its General Pay and Management and Confidential Families ("MCEG"). Exh. G at 4. Salary grades in the General Family category salary grades range from Grade 01 to Grade 31 and in the MCEG category range from MC 01 to MC 31. Id. Each of the salary grades has a minimum and maximum value.

Pl.'s Appeal at 2. This explanation simply furthers confusion.

1 outside consultant to study her position. Once this study was  
2 complete, the District determined that Ms. Gerald was  
3 appropriately "classified." Ms. Gerald appealed this decision  
4 to the Special Master, also pursuant to ¶ 55 of the consent  
5 decree.

6 On October 11, 2006, the Special Master issued a ruling  
7 finding that:

8 [T]he reclassification study and corrected study  
9 appropriately compared and analyzed Ms. Gerald's  
10 position and that the request for a further  
reclassification study is, therefore, not well taken.

11 Oct. 11, 2006 Ruling, Ex. B of Thomas Decl. The Special Master  
12 did, however, conclude that further study of Ms. Gerald's salary  
13 was warranted:

14 RT does not deny that Ms. Gerald's position remains at  
15 the same salary grade while the [male] Analyst I and  
16 II positions were upgraded in 2004. Thus, relative to  
17 those she supervises, Ms. Gerald's salary does not  
18 have the same spread as it did before the  
reorganization and the lack of salary adjustment may  
well have violated an agreement to move her position  
up if the Analyst I & II positions were moved up  
[citations omitted].

19 The Special Master finds that the reclassification  
20 study and corrected study appropriately compared and  
21 analyzed Ms. Gerald's position ...[h]owever, the Special  
Master finds that Ms. Gerald's position should be  
studied with respect to its salary.

22 The Special master {sic} notes that other salary  
23 assessments and adjustments have been made in the  
24 Information Technology Department, including the new  
25 manager and in light of the fact the lower  
classification salaries were adjusted, but not Ms.  
Gerald's, an inference of discrimination and/or  
retaliation is created.

26 In order to dispel any inference of

1 discrimination or retaliation, the Special Master  
2 orders RT to do a thorough and complete salary  
analysis of Ms. Gerald's position.

3 Id. It is undisputed that the District complied with the  
4 October 11th Order and hired an additional consultant to prepare  
5 a salary survey of Ms. Gerald's salary level.

6 Upon completion of this salary study, the District  
7 recommended that the appropriate salary level for Ms. Gerald was  
8 MC17. The recommendation was submitted to the Special Master  
9 who approved the MC17 grade level in an order dated December 29,  
10 2006. Ex. C, Thomas Decl.

11 Soon thereafter, the District prepared an Issue Paper for  
12 approval by the District's Board of Directors in an effort to  
13 implement the Special Master's December 29, 2006 ruling. The  
14 Issue Paper provided the following explanation of the proposed  
15 action for approval by the Board of Directors:

16 Pursuant to a December 29, 2006 ruling of the Special  
17 Master, it was ordered that the District reallocate  
18 one Senior Information Technology Analyst position  
19 from salary grade G15 to salary grade MC17, effective  
20 as of February 1, 2005. Since the decision relates  
21 solely to the incumbent who presently holds this  
position; the other two Senior Information Technology  
Analyst positions will remain at salary grade G15,  
pending completion of the District-wide salary survey  
project.

22 In order to implement the Special Master's ruling, the  
23 District has created the salary grade applicable to  
24 the one Senior Information Technology Analyst position  
25 as salary grade G15A. Salary grade G15A shall be  
26 aligned at the level of the MC17 grade pursuant to the  
terms of the Special Master's order. Since this  
position is not considered eligible for  
reclassification to that of a MCEG, this proposal  
satisfies the conditions of the order and maintains  
the allocation of this position within the General

1 Family.

2 Ex. D to Thomas Decl. The District was attempting to harmonize  
3 the fact that Ms. Gerald was working at the appropriate level  
4 (i.e., that she was appropriately classified) with the Special  
5 Master's order to increase Ms. Gerald's pay grade.

6 Counsel for Ms. Gerald objected to the Issue Paper and  
7 raised several issues. On February 5, 2007, counsel for Ms.  
8 Gerald sent a two page letter containing several exhibits to the  
9 Special Master requesting "an order compelling compliance with  
10 the Special Master's ruling that the 'appropriate class for  
11 [Cheryl Gerald] is MC17, as proposed by Regional Transit." Ex.  
12 D & E, Thomas Decl.

13 On February 22, 2007 the District submitted to the Special  
14 Master a response to Ms. Gerald's concerns. Ms. Gerald replied  
15 and alleged that the District's implementation of the Special  
16 Master's order served as further evidence of discrimination  
17 and/or retaliation. Ex I, Thomas Decl. At that point, the  
18 matter was submitted and the District was not given an  
19 opportunity to reply to Ms. Gerald's new allegations of  
20 discrimination.

21 On March 6, 2007 the Special Master issued an order which  
22 Ms. Gerald now appeals to this court. The March 6th Order  
23 attempted to clarify the December 29th Order. The Special  
24 Master conceded that there was confusion between the terms  
25 "classification" and "salary grade" and explained that the focus  
26 of the December 29th Order was salary grade not classification

1 or reclassification: "[t]he classification issue had been  
2 decided in the October 11, 2005 Order." March 7, 2007 Order at  
3 2, Ex. I, Thomas Decl. (In the October Order, the Special  
4 Master found that Ms. Gerald was appropriately classified).

5 In the March 6th Order, the Special Master concluded that  
6 the District had properly implemented its prior ruling in  
7 "providing that Ms. Gerald's salary is equivalent (aligned with)  
8 Grade MC17 and paying back as ordered. There was no violation  
9 of the Consent Decree by taking the issue to the Board." March  
10 7, 2007 Order at 3, Ex. I, Thomas Decl.

## 11 **2. Analysis**

12 Ms. Gerald seeks reversal of the Special Master's March 7,  
13 2007 Order. As explained herein, Ms. Gerald fails to establish  
14 that the March 7, 2007 Order is clearly erroneous or contrary to  
15 law.

16 Ms. Gerald makes two general arguments, neither of which  
17 establish that the Special Master's decision should be reversed.  
18 First, Ms. Gerald argues that the March 7th Order contradicts  
19 the Special Master's previous orders. Specifically, Ms. Gerald  
20 explains that in her October 11, 2006 Order, the Special Master  
21 found that "Ms. Gerald's salary does not have the same spread as  
22 it did before the reorganization and the lack of salary  
23 adjustment may well have violated an agreement to move her up if  
24 the Analyst I & II position were moved up." Oct. 11, 2006  
25 Order. Ms. Gerald then argues that "despite these factual  
26 findings, the Special Master ruled [in March 2007] that [the

1 District's] assignment of Ms. Gerald to the same salary grade  
2 with a designation of Grade 15 A met the requirements of her  
3 initial order." Pl.'s Appeal at 7. In short, Ms. Gerald argues  
4 that although she is being paid more at the 15A grade level, she  
5 is not obtaining the benefits of being at the MC17 grade level.

6 The court is sympathetic to Ms. Gerald's position, however,  
7 the record simply does not support her argument. The District's  
8 Issue Paper (which is part of the record) specifically stated  
9 that although Ms. Gerald would be paid at the newly created 15A  
10 grade, she would receive all the benefits of a MC17 employee.  
11 The District explained that it created the grade 15A in an  
12 effort to pay Ms. Gerald more while simultaneously respecting  
13 the fact that the Special Master had concluded that Ms. Gerald  
14 did not need to be reclassified.

15 The Special Master's March 7, 2007 Order is clear on this  
16 point. The Special Master, responding to Ms. Gerald's concerns,  
17 specifically explained the ambiguity in her previous orders.  
18 Laying out all the relevant facts, the Special Master explained  
19 that the issue of classification had been decided in the October  
20 11, 2006 Order. On December 29, 2006, the Special Master then  
21 ordered that Ms. Gerald be paid at the MC17 grade level. In her  
22 March 7, 2007 order, the Special Master essentially found that  
23 the District's creation of the 15A grade level was permissible  
24 as the 15A grade level is aligned and equivalent to MC 17. To  
25 the extent that the Special Master concluded that the two pay  
26 grade levels are aligned, there is no grounds to disturb this



1 factual finding.

2 At oral argument the court asked plaintiff's counsel for  
3 clarification on this point. Specifically, the court asked  
4 whether or not there were benefits to being at the MC17 grade  
5 versus at 15A. Plaintiff's counsel argued that there were  
6 differences between the two pay grades, but failed to explain  
7 where in the record the court would find such evidence.  
8 Moreover, counsel for the District contended that the two grade  
9 levels were in fact aligned - that Ms. Gerald would receive  
10 identical benefits at the 15A grade level. In support of this  
11 proposition, counsel for the District cited to the Issue Paper  
12 drafted by the District and submitted to both plaintiff and the  
13 Special Master.

14 While Ms. Gerald presents a compelling argument, it is  
15 simply not clear that the record supports her position.  
16 Moreover, the court gives great deference to the Special  
17 Master's factual findings. See Concrete Pipe and Products of  
18 California, Inc. v. Construction Laborers Pension Trust for  
19 Southern California, 508 U.S. 602, 623 (1993). The Special  
20 Master reviewed the record and concluded that the two grade  
21 levels were equivalent. Ms. Gerald fails to cite to any part of  
22 the record which would suggest the Special Master's order was  
23 clearly erroneous or contrary to law.

24 Ms. Gerald also argues that the "Special Master's failure  
25 to consider Ms. Gerald's evidence of continued [sic] gender  
26 discrimination and retaliation is contrary to law." Pl.'s

1 Appeal at 8. Ms. Gerald maintains that she presented evidence  
2 to the Special Master that "the District modified its  
3 classification from MC 17 to Grade 15 A less than two weeks  
4 after Ms. Gerald testified at a hearing before the Special  
5 Master for another class member Ann Gorman who also alleged  
6 gender discrimination and retaliation." Pl.'s Appeal at 9.

7 As the District properly points out, Ms. Gerald's arguments  
8 about continued gender discrimination were first raised in her  
9 reply brief to the Special Master, thereby precluding the  
10 District from responding to these allegations. Accordingly, the  
11 issue of continued discrimination was not clearly before the  
12 Special Master as it was briefed only by Ms. Gerald. This would  
13 explain why the Special Master's March 7th Order did not address  
14 the allegation or consider the evidence presented by Ms. Gerald.

15 Even if the court were to assume that the Special Master  
16 could have, or should have, considered the additional  
17 allegations of discrimination, it is not clear that the Special  
18 Master's failure to consider Ms. Gerald's argument is clearly  
19 erroneous or contrary to law. Ms. Gerald's appeal to this court  
20 contains only two pages on this issue and fails to provide any  
21 meaningful justification for why this court should reverse the  
22 decision of the Special Master.

23 In sum, it remains unclear how, if at all, the March 7th  
24 Order is clearly erroneous or contrary to law. Accordingly, Ms.  
25 Gerald's appeal is DENIED.

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1 **B. The District's Appeal**

2 The District appeals the Special Master's March 22, 2007  
3 ruling regarding the complaint of Ann Gorman. For the reasons  
4 discussed herein, the Special Master's ruling must be affirmed.

5 **1. Relevant Facts**

6 The facts surrounding the District's appeal are relatively  
7 clear and undisputed. Ms. Gorman was employed as an  
8 Administrative Assistant II with the Accessible Services  
9 division within the District. Her position is governed by the  
10 Memorandum of Agreement ("MOA") between the District and the  
11 Administrative Employees Association ("AEA").

12 It is undisputed that Ms. Gorman has been subject to  
13 several disciplinary actions. In August of 2006, Ms. Gorman  
14 received two charge letters. The first alleged that Ms. Gorman  
15 mishandled her supervisor's mail and the second alleged that Ms.  
16 Gorman taped conversations with her boss without her boss'  
17 knowledge. Ms. Gorman filed a complaint with the Special Master  
18 alleging that the two charge letters were in retaliation for her  
19 earlier request for reclassification of her position. On March  
20 5, 2007, following an evidentiary hearing, the Special Master  
21 found that Ms. Gorman had not established retaliatory conduct.

22 Ms. Gorman received two additional charge letters in  
23 January of 2007. It was these two letters which became the  
24 subject of the Special Master's March 22, 2007 Order. The first  
25 of these disciplinary actions relates to allegations that Ms.  
26 Gorman impermissibly altered her time sheets and the second

1 action relates to allegations that Ms. Gorman forged her  
2 supervisor's signature. Ms. Gorman denies the allegations.  
3 Meanwhile, Ms. Gorman's employment was terminated effective  
4 January 27, 2007.

5 Both of these disciplinary actions are subject to the  
6 administrative appeal process contained in the AEA MOA. See  
7 Sacramento Regional Transit District - Personnel Rules and  
8 Procedures for Salaried Employees, District's Ex. D. Neither of  
9 these proposed disciplinary actions have been pursued to the  
10 final step of the grievance process, although Ms. Gorman is in  
11 the process of pursuing these administrative remedies.

12 Ms. Gorman appealed her termination to the Special Master,  
13 arguing that her termination was in retaliation for pursuing her  
14 rights under the Consent Decree. In support of her appeal, Ms.  
15 Gorman argued that the District terminated her "although the  
16 appeals process had not been completed pursuant to its policies  
17 and procedures, and provided her with less than a day's notice  
18 of her termination meeting" for "pursuing her rights under the  
19 Consent Decree." Compl. of Ann Gorman, District's Ex. E. She  
20 further contended that her termination was done in a manner  
21 "that was not in compliance with RT's previous representations  
22 that Gorman would be placed on administrative leave until the  
23 issues in [the Charge Letter] were resolved." Id.

24 The Special Master held a conference call with counsel for  
25 both parties on March 22, 2007. During that call, counsel for  
26 the District requested a hearing on the issue of retaliation.

1 The request was denied.

2 On that same day, the Special Master issued a two page  
3 ruling, which provided in full:

4 Based on the Special Master's evaluation of the  
5 evidence presented in support and opposition to the  
6 Complaint regarding the termination of Ann Gorman as  
7 well as information and arguments provided at the  
8 conference call of March 22, 2007, the Special Master  
9 makes the following ruling:

1) The evidence supports a finding that a prima  
2 facie case of retaliation has been established by Ms.  
3 Gorman;

4) The District has provided some evidence that the  
5 disciplinary issues were not motivated by a  
6 retaliatory motive; however because the District did  
7 not follow its own appeal policies and gave  
8 conflicting and confusing information to the Claimant  
9 about her status pending resolution of the issue, the  
10 Special Master finds that an inference of retaliation  
11 has been established and that the Districts'  
12 explanation is pretextual;

3) The Special Master, therefore, orders that RT  
4 shall complete the appeal review procedure set forth  
5 in its own procedures (RT Complaint Procedures  
6 5-5.206) and render a final decision with respect to  
7 Ms. Gorman's termination based on Charge Letter # 3  
8 (dated January 3, 2007).

4) During the completion of RT's appeal review, RT  
5 is ordered to place Ms. Gorman on paid administrative  
6 leave as previously indicated would be done by her  
7 Supervisor, Ms. Ham (See Memo dated January 5, 2007,  
8 sic. January 8, 2007, Exhibit 5 to Complaint).

5) RT is further ordered to advise Ms. Gorman of the  
6 results of said review and advise Ms. Gorman pursuant  
7 to Code of Civil Procedure 1094.6(f) of her right to  
8 bring a Writ of Mandate pursuant to Code of Civil  
9 Procedure 1094.5.

24 March 22, 2007 Order, District's Ex. A.

25 It is the March 22, 2007 order that the District appeals.

26

1 In its appeal to this court, the District maintains that  
2 subsequent to the Special Master's findings, the appeal process  
3 is underway and that in accordance with the Special Master's  
4 findings, Ms. Gorman has been placed on administrative leave  
5 during the completion of the appeals process. See Def.'s Appeal  
6 at 7.

## 7 **2. Analysis**

8 The District argues that the Special Master's ruling is  
9 clearly erroneous because the finding of pretext ignores  
10 established retaliation law and because it is premature to make  
11 a finding of retaliation as Ms. Gorman is still on  
12 administrative leave and has not yet been terminated. For the  
13 reasons discussed herein, the Special Master's ruling must be  
14 affirmed.

15 The District misconstrues the Special Master's order. The  
16 order is relatively straight forward. The Special Master  
17 concluded that given the proximity between the time that Ms.  
18 Gorman sought reclassification and the time that she was  
19 terminated, there was evidence which supported a finding of  
20 retaliation. The Special Master also found that the District  
21 was not following its own appeal policies and had given  
22 conflicting and confusing information to Ms. Gorman about her  
23 status pending resolution of her appeal. For these reasons, the  
24 Special Master ordered that the District comply with the appeal  
25 review procedure set forth in its own set procedures and that  
26 pending the appeal, Ms. Gorman be placed on paid administrative

1 leave.

2 Prior to the Special Master's order, the District had in  
3 fact terminated Ms. Gorman. Indeed, it was only after the  
4 Special Master's order that the District placed Ms. Gorman on  
5 administrative leave. For this reason, the District's argument  
6 that Ms. Gorman's termination has not been finalized is without  
7 merit.

8 Moreover, the Special Master was not making a final  
9 determination as to retaliation. The Special Master simply  
10 found that there was evidence which supported a finding of  
11 retaliation and accordingly, it was appropriate to place Ms.  
12 Gorman on administrative leave.

13 The District's argument that the Special Master did not  
14 sufficiently cite to the record in support of her ruling is also  
15 without merit. The first sentence of the order specifically  
16 states that the Special Master based her order on the evidence  
17 presented in support of and in opposition to Ms. Gorman's  
18 complaint.

19 Even if the court were to give the District the benefit of  
20 the doubt, the District fails to establish how, if at all, the  
21 March 22nd Order is clearly erroneous or contrary to law. For  
22 these reasons, the District's appeal must be DENIED.


### 23 **III.**

#### 24 **Conclusion**

- 25 1. Plaintiff's Appeal is DENIED.
- 26 2. Defendant's Appeal is DENIED.

1 IT IS SO ORDERED.

2 DATED: May 9, 2007.

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5 LAWRENCE K. KARLTON  
6 SENIOR JUDGE  
7 UNITED STATES DISTRICT COURT  
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